

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. 911-026/  
on its own motion, seeking to        ) PI-122  
determine Enhanced Landline 911     )  
surcharge payment requirements       ) ORDER OPENING DOCKET,  
for interconnected Voice Over         ) SEEKING COMMENTS AND  
the Internet Protocol Providers.     ) SCHEDULING HEARING  
  )  
  ) Entered: September 26, 2006

BY THE COMMISSION:

The Nebraska Public Service Commission opens the present docket on its own motion, pursuant to Neb. Rev. Stat. § 75-118.01 to interpret the scope of the Emergency Telephone Communications Systems Act, Neb. Rev. Stat. § 86-420 et seq. (2006 Supp.) and existing Commission rules and regulations as it pertains to interconnected Voice Over the Internet Protocol Providers (VoIP).

The 8<sup>th</sup> Circuit affirmed a District Court order, finding that the Minnesota Public Utilities Commission was preempted by federal law from regulating Vonage Holdings Corporation, a VoIP provider, as a telecommunications carrier. *Vonage v. The Minnesota Public Utilities Commission*. On June 3, 2005, the Federal Communications Commission (FCC) released its First Report and Order and Notice of Rulemaking in the matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36 and 05-196 (FCC Order). With respect to 911 funding, the FCC recognizes that,

While some state laws today may already require 911 funding contributions from providers of interconnected VoIP, interconnected VoIP providers may not be covered by existing state 911 funding mechanisms in other states. But even in the latter circumstance, the record does not indicate that states are receiving no 911 funding contributions from interconnected VoIP providers. On the contrary, the record indicates that many interconnected VoIP providers currently are contributing to state 911 funding mechanisms. In addition, states have the option of collecting 911 charges from wholesale providers with whom interconnected VoIP providers contract to provide E911 service, rather than assessing those charges on the interconnected VoIP providers directly.

FCC Order at 30. The FCC further suggests, that states may be able to impose funding obligations on "systems service

providers, such as incumbent LECs, that provide direct interconnection to the interconnected VoIP providers." *Id.* The rules set forth by the FCC did not specifically address whether states may impose a 911 surcharge on interconnected VoIP providers.

Imposition, collection and remittance of landline 911 surcharges, is governed in Nebraska by the Emergency Telephone Communications Systems Act (the Act). "The purpose of the Act is to fund the development, installation, and operation of 911 emergency telephone communications systems throughout the state." Neb. Rev. Stat. § 86-421 (2006 Supp.). Governing bodies which incur charges for the installation, maintenance, and operation of 911 service, may institute a surcharge to supplement the costs of providing the 911 service. See Neb. Rev. Stat. § 86-435(1) (2006 Supp.). For all but Douglas County which is limited to \$.50, the surcharge can be an amount up to \$1.00 "per month local exchange access line physically terminating in the governing body's 911 service area." § 86-435(1) and (2). "Local exchange access line means **any** telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911." Neb. Rev. Stat. § 86-427 (2006 Supp.) (emphasis added).

"A service user shall pay service surcharges in each 911 service area where the service user has local exchange access line service and receives 911 service. . . ." Neb. Rev. Stat. § 86-436.

In the present investigation, the Commission seeks comment on the following:

1. Whether the Act requires interconnected VoIP providers to collect and remit the landline 911 surcharges imposed by governing bodies;
2. Whether requiring interconnected VoIP providers to collect and remit the landline 911 surcharges imposed by governing bodies is preempted by federal law;
3. Whether imposition of the landline 911 surcharges on the wholesale providers with whom interconnected VoIP providers contract to provide E911 service is permissible under the Act.

All interested parties should file comments on the above-listed questions with the Commission **on or before October 30, 2006 at 5:00 p.m.** All parties filing comments should file one original and five paper copies and email one electronic copy to [brandy.zierott@psc.ne.gov](mailto:brandy.zierott@psc.ne.gov).

A hearing in this matter will be held on **December 5, 2006 at 1:30 p.m.**, in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened to interpret the scope of the Emergency Telephone Communications Systems Act, Neb. Rev. Stat. § 86-420 et seq. (2006 Supp.) as it pertains to interconnected Voice Over the Internet Protocol Providers.

IT IS FURTHER ORDERED that all interested parties should file comments on the above-listed issues with the Commission **on or before October 30, 2006 at 5:00 p.m.** All parties filing comments should file one original and five paper copies and email one electronic copy to brandy.zierott@psc.ne.gov.

IT IS FINALLY ORDERED that a hearing on this matter will be held on **December 5, 2006 at 1:30 p.m.** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of September, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director